



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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RE: MUR 5949
www.iowatrueblue.com

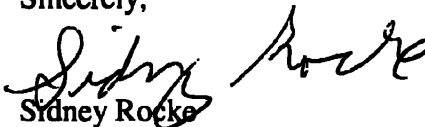
Dear Mr. Reese:

On November 6, 2007, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("Act"). On July 28, 2008, the Commission found, on the basis of the information in the complaint, and information provided by respondents, that there is no reason to believe that the respondents violated the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Kimberly D. Hart, the attorney assigned to this matter at (202) 694-1650.

Sincerely,


Sidney Rocke
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Obama for America and Martin Nesbit,
in his official capacity as treasurer

MUR 5949

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by Kirk Tofte pursuant to 2 U.S.C. § 437g(a)(1).

II. FACTUAL SUMMARY

Gordon Fischer, a past State chairperson of the Iowa Democratic Party, maintains a website, www.iowatrueblue.com, being operated as a "political blog." Monica Fischer is Gordon Fischer's wife. On or about August 15, 2007, Gordon Fischer reported to the Des Moines Register that he was re-launching his political blog website. During the week of September 17, 2007, Gordon Fischer announced on the blog that he and his wife would be supporting Senator Obama for President. Gordon Fischer's endorsement and subsequent remarks regarding Senator Obama were reported in the Iowa media, national newspapers as well as Internet sources.¹

The complaint alleges that Gordon and Monica Fischer ("Fischer Respondents") are making coordinated in-kind contributions to Obama for America and Martin Nesbit, in his official capacity as treasurer, ("Obama Committee") through the website,

¹ The Commission's contribution records show that neither Gordon Fischer nor Monica Fischer made any contributions to the Obama Committee.

www.iowatrueblue.com.² The allegations are based on the similarity of the information contained on the website and information provided by the Obama Committee in connection with Senator Obama candidacy, and its 100% negative postings about Senator Clinton. The complaint also alleges that the Fischer Respondents solicited donations from the website to benefit the Obama Committee without properly disclosing to potential contributors the need to report any contributions made as having been made to the Obama Committee. In addition, the complaint alleges that the Fischer Respondents altered the website in an attempt to disguise past solicitations for the benefit of the Obama Committee. Finally, the complainant alleges that Gordon Fischer attempted to interfere with his right to file a complaint.³

In response, Gordon Fischer denies that any type of coordination has occurred between the Fischer Respondents, the blog and the Obama Committee and asserts that anything he writes on his political blog is an exercise of his Constitutional right to free speech. Both Gordon and Monica Fischer deny that Monica Fischer has any involvement in his political blog. Gordon Fischer also denies that he ever solicited donations to his website and that he attempted to "cover up past solicitations." In addition, Gordon Fischer denies that any action he took interfered with the filing of an FEC complaint.

² For example, the complaint cites to a "negative comment about an alleged Hillary Clinton 'flip flop' regarding her stance on Iran contained on his website" on October 12, 2007 and a speech made by Senator Obama at Drake University in Des Moines, Iowa where Senator Obama attacked Hillary Clinton by name and mentioned her 'flip flop' on Iran.

³ Complainant alleges that Gordon Fischer contacted a Clinton campaign press relations representative in Des Moines to apprise him of the Complainant's concerns and intent to file a complaint as a means of discouraging him from filing the complaint. However, there is no indication that Gordon Fischer attempted to interfere with the filing of the complaint. His response generally denies this allegation but does not address whether he contacted the Clinton campaign regarding the Complainant's concerns. More importantly, it does not appear that said action, if it occurred, would constitute a violation of any provision of the Act or regulations.

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In response, the Obama Committee states that, even if it had engaged in coordination with an Internet website, such actions would not constitute a violation of the Act because the Commission regulations at 11 C.F.R. § 100.26 hold that communications over the Internet, except for communications placed for a fee on another person's website, are not considered as a "public communication." The Obama Committee further states that Fischer's website does not fall into the exception category noted in the regulations, therefore, the complaint should be dismissed. In addition, the Obama Committee asserts that, in advancing this ground for dismissal, which is conclusive, the campaign is not acquiescing in any implication of coordination as a matter of fact since the complaint does not allege any facts which would constitute coordination.

III. LEGAL ANALYSIS

A. Internet Political Blog

Gordon Fischer operates the website, www.iowatrueblue.com, as a political blog and most likely incurs some nominal costs for leasing space on a server since his website does not appear to be hosted on a free, public-domain site.⁴ Political blogging is exactly the type of Internet activity that the Commission exempted from the definition of "contribution" and "expenditure." See 11 C.F.R. §§ 100.94, 100.155. As the Commission noted in the Explanation and Justification to the *Internet Communications* regulations, the cost of placing information on a website "is often only the time and energy devoted by an individual to share his or her views and opinions with the rest of the Internet community." See 71 Fed. Reg. 18594 (April 12, 2006). In

⁴ For example, the Fischer blog is not posted on the myspace.com website or any of the other similar websites that would be considered free, public-domain sites.

addition, the Commission concluded that Internet communications, such as blogging or publishing one's own website, which are generally performed for free or at a low cost, are thereby excluded from the definition of "public communication."⁵ *Id.* Therefore, it does not appear that Fischer made a contribution or expenditure pursuant to the Act or its regulations in connection with the www.iowatrueblue.com website.⁶

There is no information to suggest that the Obama Committee is coordinating with the Fischer website as to its contents. The allegation that the website contains views and information similar to material disseminated from the Obama Committee, coupled with Gordon Fischer's admitted support of the Obama candidacy is not sufficient evidence of coordination. Moreover, the Obama Committee could coordinate with an Internet website being operated as a political blog that does not pay a fee to place information on another's website without any resulting violation since this category of Internet activity has been specifically exempted from the definition of a "public communication." In addition, there is no information to support the

⁵ The Act and regulations define public communication as "a communication by any means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public advertising. The term "*general public political advertising* shall not include communications over the Internet, except for communications placed for a fee on another person's Web site." 11 C.F.R. § 100.26.

⁶ Gordon Fischer's response does not address whether he is the owner of the domain name, www.iowatrueblue.com. We searched for domain name registration information at a publicly available website, www.nic.com, which indicates that a company named Domains by Proxy is listed as the registrant for www.iowatrueblue.com. See www.nic.com/nic/whois/. It is possible that Gordon Fischer engaged the services of this company to register the website on his behalf. Nonetheless, even if Fischer did expend some funds to purchase the domain name, it appears that these funds would be viewed as the type of nominal expenses incurred by uncompensated bloggers that are exempt from the definition of "expenditure" and "contribution" under the Act and regulations. See 11 C.F.R. §§ 100.94, 100.155.

complaint allegation that the Fischer website contained a link provided by the Obama Committee showing its latest commercial.⁷

However, even if the Fischer website did contain the Obama link, it does not appear that there would be any resulting contribution or coordination consequences. The Commission's *Internet Communications* regulations addressed the issue of republication of campaign materials as it relates to political bloggers. It concluded that a person's republication of a candidate's campaign materials on his or her own website, blog, or e-mail cannot constitute a coordinated communication. See 71 Fed. Reg. 18600 (April 12, 2006).⁸

B. Website Solicitation

Complainant contends that the Fischer website, at some point, contained a solicitation for donations and that Gordon Fischer removed the solicitation from the website after being questioned about it in an effort to disguise his previous solicitation requests. Gordon Fischer denies that the Fischer website ever contained any solicitation for donations as has been alleged by Complainant. There is no information to suggest that Gordon Fischer or Monica Fischer solicited donations to the website, www.iowatrueblue.com, as has been alleged by the Complainant. In addition, Complainant has not provided any information to substantiate the

⁷ We have attempted to locate the alleged posting containing the Obama Committee link through the website's archives. However, we have not located a posting for October 2007, the date the complaint alleges that link appeared on the website. Complainant has not submitted any other information to demonstrate that this particular blog posting existed.

⁸ The Commission also noted, in the Explanation and Justification, that Senator Russ Feingold, one of the BCRA's sponsors, stated that "linking campaign Web sites, quoting from, or republishing campaign materials and even providing a link for donations to a candidate, if done without compensation, should not cause a blogger to be deemed to have made a contribution to a campaign or trigger reporting requirements." *Id.*

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allegation that the solicitation ever occurred and we have not found any information to support the allegation that Gordon Fischer solicited for donations on the website.

IV. CONCLUSION

Accordingly, the Commission finds no reason to believe that Obama for America and Martin Nesbit, in his official capacity as treasurer, violated any provision of the Act or regulations and close the file.

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